

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JON VAN SKIVER,

Defendant and Appellant.

G027357

(Super. Ct. No. C44527)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Charles Margines, Judge. Affirmed.

Andrew E. Rubin, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, and Gary W. Schons, Assistant Attorney General, for Plaintiff and Respondent.

* * *

Defendant David Jon Van Skiver was committed to Patton State Hospital for two years after a jury found it to be true that he suffers from a mental disease, disorder, or defect, predisposing him to commit sexual crimes and that he represents a substantial danger of bodily harm to others, within the meaning of Welfare and Institutions Code

section 6316.2. The trial court instructed the jury with CALJIC No. 17.41.1 as follows: “The integrity of a trial requires that jurors at all times during their deliberations conduct themselves as required by these instructions. Accordingly, should it occur that any juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on the consequence of their finding or any other improper basis, it is the obligation of the other jurors to immediately advise the court of the situation.”

Defendant argues it was error to give this instruction because it impinges on his constitutional rights to a fair trial and to a unanimous jury and infringes on the power of jury nullification. He further contends the instruction chills jury deliberations and violates the jurors’ First Amendment rights to freedom of speech and freedom of association. In addition, he argues the instruction may be used by majority jurors to force a holdout juror to conform to the majority’s view. The Attorney General contends the instruction was proper, and even if it was not, defendant suffered no prejudice. We agree.

Review has been granted in several cases discussing the propriety of CALJIC No. 17.41.1. (See e.g., *People v. Morgan* (2000) 85 Cal.App.4th 34, review granted Mar. 14, 2001, S094101; *People v. Taylor* (2000) 80 Cal.App.4th 804, review granted Aug. 23, 2000, S088909; *People v. Engelman* (2000) 77 Cal.App.4th 1297, review granted Apr. 26, 2000, S086462.) On the issue of jury nullification, the California Supreme Court recently reaffirmed “the basic rule that jurors are required to determine the facts and render a verdict in accordance with the court’s instructions on the law.” (*People v. Williams* (2001) 25 Cal.4th 441, 463.) Consequently, although a jury has the *ability* to exercise the power of nullification, there is no *right* to jury nullification. (See *id.* at pp. 449-454.)

In any event, we need not consider the other constitutional issues raised by defendant because, even assuming the challenged instruction should not have been given, it does not create a structural error requiring automatic reversal. (*People v. Molina* (2000) 82 Cal.App.4th 1329, 1335.) The jury reached a verdict after deliberating for less than four hours, and there is nothing in the record to indicate any conflict, refusal to deliberate, or

expressions of intent to disregard the law by any of the jurors. In the absence of an affirmative showing in the record, “[w]e will not infer that the jury instruction had any impact prejudicing defendant.” (*Id.* at p. 1336.)

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

O’LEARY, J.